

CRIMINAL CODE COMMISSION

Report to the
1981 General Assembly of North Carolina

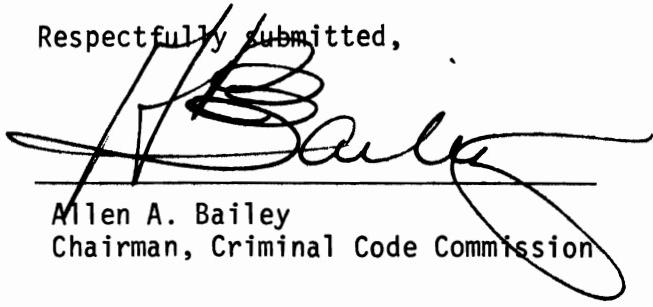
WHITE COLLAR CRIME

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TO: MEMBERS OF THE NORTH CAROLINA GENERAL ASSEMBLY

The Criminal Code Commission reports to the 1981 session of the North Carolina General Assembly on the problem of white collar crime in North Carolina. This report is made pursuant to Resolution 28 of the 1979 North Carolina General Assembly.

Respectfully submitted,


Allen A. Bailey
Chairman, Criminal Code Commission

INTRODUCTION

Resolution 28 (see Appendix A) of the 1979 North Carolina General Assembly directed the Criminal Code Commission to study the problem of white collar crime in North Carolina and proposals to remedy that problem. Resolution 28 requires that the report be made no later than the first day of the 1981 session.

The study by the Criminal Code Commission included reading publications dealing with white collar crime, written surveys of North Carolina prosecutors, law enforcement officers and chambers of commerce, and interviews with federal and state criminal justice officials.

DEFINITION OF WHITE COLLAR CRIME

Resolution 28 did not define the term "white collar crime." One of the most widely-used definitions nationally is "an illegal act or series of acts committed by nonphysical means and by concealment or guile, to obtain money or property, to avoid the payment or loss of money or property, or to obtain business or personal advantage." A more simple and layman-like definition would be "non-violent fraudulent or secretive acts committed in order to obtain money, property, or personal or business advantage, and usually committed by persons who are not normally considered 'criminals.'"

Typical white collar crimes are embezzlement, obtaining property by false pretenses, antitrust, income tax and securities violations, bribery, investment swindles, pyramid schemes, deceptive advertising, government frauds such as Medicaid fraud, and other frauds involving insurance, home improvements, bankruptcy, business opportunities, credit cards and computers.

FINDINGS

1. The extent of white collar crime being committed in North Carolina is not reasonably known. There are at least two reasons why.

First, most white collar crime is unreported because the victim is unaware of his loss, or if he is aware, he does not report it.

Second, white collar crimes reported by law enforcement agencies are not compiled adequately at the present time. Local law enforcement agencies in North Carolina are not required to report arrests and criminal offenses to the Police Information Network, although almost all of them do so on a voluntary basis. North Carolina (as most other states) uses the standard Uniform Crime Report (UCR) Program, which requires agencies to report only arrests, but not offenses, for such white collar crimes as embezzlement and fraud. In addition, the amount of financial loss resulting from such crimes is not included in the reporting program. Thus the only information about embezzlement and fraud for calendar year 1979 in the Uniform Crime Report issued by the Police Information Network is the fact that there were 498 arrests for embezzlement and 39,820 arrests for fraud. The fraud category includes worthless checks, thus explaining the high figures.

The Police Information Network is developing a new reporting system, Incident Base Reporting, which will provide more accurate and detailed information on all reported crimes. It will use initial and supplemental investigation reports and arrest reports submitted by local law enforcement agencies to provide information about reported crimes, the amount of loss associated with each criminal offense, and whether an arrest resulted and what specific charge was brought. In addition, the fraud category (as with other categories) will be subdivided to provide more specificity than the standard UCR Program. Fraud will be subdivided into: (1) worthless check;

(2) false pretenses; (3) flim-flam; (4) unauthorized use of conveyance by employee and failure to return a rental car; and (5) other. The success of this reporting system will depend on the cooperation of local law enforcement agencies and the provision of funds for additional Police Information Network staff.

In 1974 the United States Chamber of Commerce published A Handbook on White Collar Crime which estimated that the "ball-park" figure for the short-term and direct dollar loss [from white collar crime] is estimated at not less than \$40-billion annually, which excludes the cost to the public and business of price-fixing illegalities and industrial espionage . . ." It was admitted, however, that no one has ever computed a reasonably accurate figure. And it remains highly unlikely that a reasonably accurate figure could be compiled, since most white collar crime is not discovered or reported.

2. Local law enforcement agencies do not have sufficient resources or time to investigate most white collar crimes. Personnel trained in accounting are necessary to investigate most white collar crimes. Most local law enforcement agencies lack such personnel. In addition, local agencies are overburdened with investigating such crimes as murder, rape, burglary, larceny, armed robbery, forgery, and arson.

3. The Special Investigation Division of the Department of Justice needs additional State Bureau of Investigation (SBI) agents if it is to investigate adequately the bulk of white collar crimes in North Carolina. The Division consists of nine SBI agents, who investigate most complex white collar crime cases in North Carolina. More agents will be needed so the Division can more adequately deal with their caseload. In addition, training funds are needed

to provide the agents with the background to investigate sophisticated crimes such as computer fraud.

4. Local prosecutors generally lack the time needed to prepare and prosecute complex white collar cases because of the demands of prosecuting other cases and the requirements of the speedy trial law. The Special Prosecutions Division of the Department of Justice will be expected to continue to provide assistance to local prosecutors upon request.

5. The Consumer Protection Division of the Department of Justice needs to make more frequent use of radio and television announcements that warn consumers of recurring frauds; more staff may be needed to accomplish this goal. Greater publicity about specific consumer frauds may (1) reduce the number of victims defrauded, and (2) discourage some persons from perpetrating their schemes.

LEGISLATIVE PROPOSALS

The Criminal Code Commission will be submitting a Legislative Program and Report to the 1981 General Assembly to revise criminal laws in North Carolina. The legislative proposal will provide criminal liability for the broad range of acts that now are denominated as white collar crimes.

For example, the proposed code will codify the numerous common law and statutory larceny offenses in a single crime of theft that will (1) close any gaps in existing law, and (2) be broadly defined to encompass any new forms of white collar theft of property or services that may develop in the future. Typical white collar crimes such as embezzlement and obtaining property by false pretenses also will be included in the crime of theft. In addition, the new code will include specific provisions

dealing with kickbacks, bid rigging, commercial bribery, and deceptive business practices.

The crime of theft is an example of proposed code's effort to improve the criminal law by stating offenses more concisely, consolidating related offenses, codifying matters now found only in case law, stating offenses in modern language, closing gaps in the law, and eliminating outdated statutory provisions.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1979
APPENDIX A
RATIFIED BILL

RESOLUTION 28

HOUSE JOINT RESOLUTION 1188

A JOINT RESOLUTION DIRECTING THE CRIMINAL CODE COMMISSION TO STUDY THE PROBLEM OF WHITE COLLAR CRIME IN THIS STATE.

Be it resolved by the House of Representatives, the Senate concurring:

Section 1. The Criminal Code Commission is directed to include as part of its duties a study of the problem of white collar crime in North Carolina and proposals to remedy that problem.

Sec. 2. The Commission shall report its findings to the 1979 Session of the General Assembly no later than the first day of its 1980 Session. However, if the life of the Commission is extended into 1981, the report shall be made no later than the first day of the 1981 Session of the General Assembly.

Sec. 3. This resolution is effective upon ratification.
In the General Assembly read three times and ratified,
this the 16th day of May, 1979.

JAMES C. GREEN

James C. Green

President of the Senate

CARL J. STEWART, JR.

Carl J. Stewart, Jr.

Speaker of the House of Representatives